

ARKANSAS SUPREME COURT

No. CR 96-270

JESSIE EARL HILL
Petitioner

v.

STATE OF ARKANSAS
Respondent

Opinion Delivered March 13, 2008

PRO SE PETITION TO REINVEST
JURISDICTION IN THE TRIAL
COURT TO CONSIDER A
PETITION FOR WRIT OF ERROR
CORAM NOBIS, PRO SE MOTION
TO QUASH RESPONSE [CIRCUIT
COURT OF GRANT COUNTY, CR
95-38]

MOTION DENIED; PETITION
DENIED.

PER CURIAM

A jury found petitioner Jessie Earl Hill guilty of capital murder and sentenced him to life imprisonment without parole. This court affirmed the judgment. *Hill v. State*, 325 Ark. 419, 931 S.W.2d 64 (1996). Petitioner now brings a pro se petition in which he requests permission to proceed in the trial court with a petition for writ of error coram nobis.¹ After a judgment has been affirmed on appeal, a petition filed in this court for leave to proceed in the trial court is necessary because the circuit court can entertain a petition for writ of error coram nobis only after we grant permission. *Dansby v. State*, 343 Ark. 635, 37 S.W.3d 599 (2001) (per curiam).

¹For clerical purposes, the instant petition was assigned the same docket number as the direct appeal. Petitioner also included in his petition a request for a hearing in the trial court on a petition for writ of habeas corpus and alleged a lack of jurisdiction to convict him. The petition was only accepted for filing in this court as one to reinvest jurisdiction in the trial court for writ of error coram nobis. A petition for writ of habeas corpus would be filed directly in the circuit court in the county in which the prisoner is held in custody. *See Lukach v. State*, 369 Ark. 475, ___ S.W.3d ___ (2007) (per curiam).

Petitioner has filed a motion to quash the State's response to his petition. He does not provide any reason that the State's response is procedurally defective, but rather asserts that the State has failed to produce any evidence in support of its arguments. Petitioner makes a number of conclusory allegations of misconduct, but asserts no facts to support those allegations, and largely reargues the points from his petition. He complains that the State and one of our staff attorneys has referred to him as proceeding pro se, although that term is appropriate, as he is not represented by counsel. He appears to contend that he is entitled to special treatment because he is proceeding pro se. This court, however, holds pro se litigants to the same standards as attorneys. *See Kennedy v. Byers*, 368 Ark. 516, ___ S.W.3d ___ (2007) (per curiam); *Elliott v. State*, 342 Ark. 237, 27 S.W.3d 432 (2000). As explained more fully below, the State is not obligated to provide evidence to rebut petitioner's claims. We therefore deny petitioner's request that we strike the State's response.

Petitioner's specific claims for error coram nobis relief in his petition are difficult to discern and sometimes incomprehensible. It is a petitioner's burden to show that the writ is warranted. *Echols v. State*, 354 Ark. 414, 125 S.W.3d 153 (2003). If we cannot understand the petitioner's arguments, his claims do not meet that burden.

Petitioner asserts that the prosecution withheld evidence, although, as the State notes in its response, he does not clearly identify what evidence he contends was withheld. He references the State's failure to disclose testing involving fingerprints found on a rolling pin that was used to strike the victim. During a pretrial hearing, however, there was testimony concerning those fingerprints and the results from testing conducted on the rolling pin. There was, therefore, testing that was disclosed. It is not clear what additional testing report, if any, petitioner asserts was not disclosed.

Petitioner references prior statements by two witnesses at the trial, which he indicates are

attached, although the petition did not include those exhibits. He contends that another witness called as a character witness testified to facts that were a surprise to him and that there was a potential witness identified in the trial transcript without an opportunity to investigate. He asserts that the withheld evidence hampered his cross-examination of witnesses and he complains of numerous trial errors and lack of sufficient evidence.

The function of the writ of error coram nobis is to secure relief from a judgment rendered while there existed some fact which would have prevented its rendition if it had been known to the trial court and which, through no negligence or fault of the defendant, was not brought forward before rendition of judgment. *Cloird v. State*, 357 Ark. 446, 182 S.W.3d 477 (2004). A writ of error coram nobis is an extraordinarily rare remedy, more known for its denial than its approval. *Larimore v. State*, 341 Ark. 397, 17 S.W.3d 87 (2000). Coram nobis proceedings are attended by a strong presumption that the judgment of conviction is valid. *Penn v. State*, 282 Ark. 571, 670 S.W.2d 426 (1984) (citing *Troglin v. State*, 257 Ark. 644, 519 S.W.2d 740 (1975)).

For the writ to issue following the affirmance of a conviction, the petitioner must show a fundamental error of fact extrinsic to the record. *Larimore v. State*, 327 Ark. 271, 938 S.W.2d 818 (1997). We have held that a writ of error coram nobis was available to address certain errors that are found in one of four categories: insanity at the time of trial, a coerced guilty plea, material evidence withheld by the prosecutor, or a third-party confession to the crime during the time between conviction and appeal. *Pitts v. State*, 336 Ark. 580, 986 S.W.2d 407 (1999) (per curiam). While petitioner attempts to fall within the third category of error, he has not presented facts extrinsic to the record. In each instance where he has identified some evidence that he claims was withheld, he has pointed to the record to establish its existence.

Moreover, based upon his allegations, we cannot say that petitioner has shown diligence in pursuing his claims. There is no specific time limit for seeking a writ of error coram nobis, but due diligence is required in making an application for relief and in the absence of a valid excuse for delay, the petition will be denied. *Echols v. State*, 360 Ark. 332, 201 S.W.3d 890 (2005). Due diligence requires that: (1) the defendant be unaware of the fact at the time of trial; (2) the defendant could not have, in the exercise of due diligence, presented the fact at trial; (3) upon discovering the fact, the defendant did not delay bringing the petition. *Id.* Here, whether petitioner claims that he had personal knowledge of the facts or not, he presents only allegations in which the defense became aware of the facts during the trial, if not prior to the trial. The witnesses were all disclosed to the defense on a witness list introduced at a pretrial hearing. Counsel had opportunity to discover their prior statements and their intended testimony.

As for the uncalled witness identified at trial, our opinion on direct appeal resolved the issue because counsel did move for a continuance to investigate. *Hill*, 325 Ark. at 427, 931 S.W.2d at 68. A claim is not cognizable in a petition for writ of error coram nobis if it may be properly raised in a timely petition for postconviction relief pursuant to Ark. R. Crim. P. 37.1 or on direct appeal. *See McArty v. State*, 335 Ark. 445, 983 S.W.2d 418 (1998) (per curiam).

Petitioner's claims of trial error and insufficient evidence also fail because those claims may be brought on direct appeal and are not cognizable in an error coram nobis proceeding. Because petitioner has stated no grounds upon which the writ may issue, we deny the petition.

Petition denied.